

REMARKS / ARGUMENTS:

Claims 1, 12 and 36 have been amended by describing the distribution of the triazole fungicide in the polymer matrix as being at a molecular level or as pockets containing a plurality of triazole molecules. Support for this feature is found in the specification at least at page 17, lines 14 – 17.

Claims 1, 3 – 8, 12 – 18, 36 – 38 and 40 - 51 are in the case.

No new matter has been added.

Rejection of claims 1, 3 – 8, 12 – 18, 36 – 38 and 40 – 51 under 35 USC §112, second paragraph, as being indefinite.

The Office has argued that the language “molecular level or finely divided pockets” is unclear. Specifically, the Office maintains that it is unclear whether molecules of triazole are claimed, and how they differ from triazole dispersed in finely divided pockets. Also, the Office questions the clarity of the term “finely divided pockets”.

Claims 1, 12 and 36 --the independent claims in which the questioned terms appear – have been amended to describe the distribution of the triazole fungicide in the particle as being “dispersed in a polymer matrix at a molecular level or as pockets containing a plurality of triazole molecules”. It is important, also, that the particles being described are “solid and generally spherical”.

35 USC §112, second paragraph, requires that the claims must particularly point out and distinctly claim the metes and bounds of the subject matter that will be protected by the patent grant. When patentable subject matter is disclosed, claims should be allowed which define the patentable subject matter with a reasonable degree of particularity and distinctness. Some latitude in the manner of expression and the aptness of terms should be permitted. See, §2173.02 MPEP.

It is important that the basic structure of the present invention is understood, and it is maintained that the language of the claims, as amended, makes this clear. The present microparticles are solid, roughly spherical, particles that contain a triazole fungicide. The particles themselves are composed of a matrix polymer and are from about 0.1 to about 200 microns in size – this is much larger than the molecules of the triazole fungicide, which are distributed throughout the polymer matrix of the particle.

The claims, however, go farther in describing the location of the triazole in the particles – it is dispersed at a molecular level or as pockets containing a plurality of triazole molecules. This structure is explicitly described in the original specification. As will be discussed below, this structure is clearly distinguishable from a porous, spongy structure that contains active molecules within the pores.

In the present discussion, each term that is used is used according to its normal, conventional meaning. For example, “dispersed at a molecular level” is a well-known phrase in the art, as has been discussed in detail in the Response filed August 12, 2004.

The terms “pockets containing a plurality of triazole molecules”, are also used according to convention meanings. A dictionary definition of “pockets”, as “a small isolated area or group distinguished (as in substance, form, contents, or condition) from a larger area of group surrounding it”, is completely suitable for the present structure. *See, Webster’s Third New International Dictionary*, Merriam-Webster, Springfield, MA, a pertinent part of which is attached hereto.

Accordingly, it is maintained that the claims as presently presented particularly point out and distinctly claim the subject matter which the applicant regards as his invention, within the meaning of 35 USC §112, second paragraph, and it is respectfully requested that the present ground of rejection be reconsidered and withdrawn.

Rejection of claims 1,3,4,7 and 8 under 35 USC §103(a) as obvious over U.S. Patent No. 5,156,843 to Leong *et al.* in view of EP 0364406 to Reuter.

The Office has maintained the rejection of the stated claims under the argument that Leong *et al.* teaches controlled release particles inclusive of fungicides, which are spherical, have a particle size of from 10 – 100 microns, and which comprise the same type of polymers that can be used in the present invention, and that EP 0364406 to Reuter teaches the triazole fungicides that are features of the present claims.

Claims 1, 12 and 36 were previously amended to describe the present particles as being solid and generally spherical and have now been amended to describe the distribution of the triazole fungicide within the particles as being dispersed in a polymer matrix at a molecular level or as pockets containing a plurality of triazole molecules,

As we have pointed out previously, it is believed that this structure clearly distinguishes the present particles over the particles of Leong *et al.* Briefly, this is because Leong *et al.* describe particles in which "... the functional substance is retained in the pores of microscopic porous particles, the particles being of an inert solid material and the pores being interconnected and open to the particle surface." (col. 1, lines 51 – 55). In the particles of Leong *et al.*, the small interconnecting pore network is a central feature of the invention and prevents the particles of Leong *et al.* from being "solid particles", as are the particles of the presently claimed invention.

It is maintained, therefore, that the particles of Leong *et al.* are distinguished over those of the present invention for the reasons discussed above, and that Reuter does not provide the missing element that would guide one of ordinary skill to produce a particle having the features as now described in the amended claims. It is respectfully requested that the present rejection be reconsidered and withdrawn.

Withdrawal of rejection dependent upon Dao *et al.*

The withdrawal of this ground of rejection is acknowledged with appreciation.

Request for reconsideration:

It is respectfully requested that the claims be amended as requested above and that the claims be passed to allowance. The Examiner is invited to call the undersigned attorney at the number given below for resolution of any remaining issues.

It is believed that no fee is required for the present response. However, if a fee is required, the Office is authorized to charge the fee to Deposit Account Number 50-2548.

March 23, 2005
Date

Respectfully requested,
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peritonitis \ 'pɛrɪtənɪtɪs \ n [NL, fr. *pneum-* + *peritonitis*]
 zitonitis with the presence of gas in the peritoneal cavity
stome \ 'n(y)ʊmə, stōm \ n -s [ISV *pneum-* + *-stome*]
 respiratory opening of a gastropod mollusk
tachogram \ 'n(y)ʊmō + \ n [pneum- + *tachogram*]
 record of the velocity of the respiratory function obtained
 use of a pneumotachograph
tachograph \ 'tʌkə'grəf \ n [ISV *pneum-* + *tachograph*]
 device or apparatus for measuring the rate of the respiratory
 tion
taxic center \ 'n(y)ʊmə + \ n [pneumotaxic fr.
 -m + *taxic*] : a neural center in the upper part of the
 that provides inhibitory impulses on inspiration and
 by prevents overdistention of the lungs and helps to
 alternately recurrent inspiration and expiration
tectic \ 'tɛktɪk \ adj [pneum- + L *tectus* (past part.
 gere to enclose, cover) + E -ic — more at **THATCH**]
 relating to, or constituting late magmatic stages of
 al deposition in which solutions and gases have a leading
thorax \ 'n(y)ʊmō + \ n [NL, fr. *pneum-* + *thorax*]
 state in which air or other gas is present in the pleural
 y and which occurs spontaneously as a result of disease
 injury of lung tissue or puncture of the chest wall or is
 used as a therapeutic measure to collapse the lung (as in
 rculosis)
tropic \ 'n(y)ʊmə, trəpɪk \ adj [pneum- + *-tropic*]
 ming, directed toward, or having an affinity for lung
 -s — used esp. of infective agents
tro-pism \ 'n(y)ʊmə, trəpɪzəm \ n [pneum- + *-tro-*
] : the quality or state of being pneumotropic
ta \ 'p(n)yʊlɪstə \ n pl comb form [NL, fr. Gk. *pneustos*
 (such) breath, fr. (assumed) Gk. *pneustos* (verbal of
 pnein to breathe) — more at **SNEEZE**] : animals having a
 (ified) mode of breathing — in higher taxa (Entero-
 -s)
 abbr, often not cap persona non grata
 abr panel
 - see -PNEA
penh or phnom penh \ 'pɒnəm, pen \ adj, usu cap initial
 fr. *Pnompenh*, *Phnom Penh*, city in Cambodia] : of or
 Pnompenh, the capital of Cambodia : of the kind or
 prevalent in Pnompenh
 abr pioneer
 abr painted
 abr painter
 abr [L *pinxit*] he or she painted it
 fr 1 poetry 2 point 3 pole
 fr 1 personnel officer 2 petty officer 3 pilot officer
 al order 5 post office 6 probation officer 7 putout
 abal polonium
poa \ n [NL, fr. Gk. *grass*; akin to Gk *pidax* spring,
 meadow] 1 cap : a genus of grasses that are widely
 in temperate and arctic regions and have open
 es with 2- to 6-flowered spikelets on which the upper
 exceed the empty ones — see KENTUCKY BLUEGRASS,
 GRASS 2 -s : any grass of the genus *Poa*
 -s -s \ 'pɒse, e \ [NL, fr. *Poa* + *-aceae*] syn of GRAM-
pöch \ vt -ED/-ING/-ES [ME *pochen*, fr. MF *pocher*, fr.
 ochler, lit., to put into a bag (the white of the egg being
 ed as the bag in which the yolk is contained), fr. *poche*
 pocket of Gmc origin; akin to MD *poke* bag — more at
 (bag) 1 : to cook in a liquid kept just below the boil-
 point (trout ~ed in bouillon) 2 : to cook (as an egg)
 poacher
po \ vb -ED/-ING/-ES [MF *pocher*, of Gmc origin; akin
 D *poken* to poke, stick — more at **POKE** (to prod)] vt
 chiefly Eng : to push, shove, or thrust roughly or force-
 ly 2 : to trample or cut up with hoofs : make soft or
 y : make mudholes in (good for grass, too, to be trodden
 they ~ it, where it's sodden — John Masfield) 3 a : to
 on a field ~ed too frequently by the amateur — *Times*
 Supp. — often used with *on* or *upon* (what happens to
 when he ~es upon a novelist's preserves — Virginia
 b : to take (game or fish) by illegal methods : STEAL
 or pheasants — G.B.Shaw) 4 : POTCH 5 : to wash
 from acid, thoroughly mix, and make uniform by agitation
 of cellulose nitrate pulp ~ vi 1 dial chiefly Eng : POKE
 to sink into mud or mire while walking : plod through
 or soft ground : plunge about b : to become soft or
 ly and full of holes when trampled on (swampy country
 is inclined to ~ in the winter — W.G.Batt & A.V.Allo)
 trespass for the purpose of stealing game : take game
 illegally (had taken to ~ing as a means of supplying
 meat for the table — H.D.Quillin) 4 : to play a ball
 racket game that should normally be played by one's
 ed egg n [ME *poched* egg] 1 : an egg dropped from its
 and cooked in simmering water for about five minutes
 also dropped egg 2 : an egg cooked in a poacher
 -s or \ 'pɒchə(r) \ n -s [2 *poach* + -er] 1 a : one that
 -s who kills (catches the ~ on his preserve — *Time*)

po-chette \ 'pɒʃet \ n -s [F, dim. of *poche* pocket — more at
 POACH] 1 : KIT 2 : HANDBAG 3 : a small envelope of thin
 transparent paper for holding a stamp (as in an album)
po-chis-mo \ 'pɒtʃɪz(,m) \ n -s [MexSp, fr. *poche*, *pocho*
 U.S. resident of Mexican origin (prob. fr. Sp *pocho* discolored)
 + Sp -ismo -ism] 1 : a term of U.S. origin borrowed into
 Mexican Spanish and used along the border between the U.S.
 and Mexico esp. by U.S.-born Mexicans (not a single ~ has
 added to the beauty of our Spanish language — F.G.Beraza)
 2 : a vocabulary consisting of pochismos
po-choir \ ('pɒʃh'wɔr \ n -s [F, stencil, stencil plate, fr. *pocher*
 to poach (an egg), sketch roughly, stencil — more at POACH]
 : a stencil process for making colored prints or adding color
 to a printed key illustration
po-cho-te \ 'pɒtʃōd-ē \ n -s [MexSp, fr. Nahuatl *pochotl*]
 1 a : any of several trees of the genus *Ceiba*; esp : CEIBA 2a
 b : a medium-sized tree (*Cochlospermum irtilifolium*) having
 seeds covered with long cottony white hairs 2 : the fiber of
 a pochote tree used as a stuffing esp. for mattresses
pock \ 'pæk \ n -s [ME *pokke*, fr. OE *pocce*; akin to MLG &
 MD *pocke* pock, G dial. *pfoche* pock, L *bucca* cheek, mouth]
 1 a : a pustule on the surface of the body in smallpox and
 other eruptive diseases; also : a spot like such a pustule
 b : HOLE (guiding the car around another ~ in the road — Peter
 De Vries) (his eyes wide ~s of fear in a white face — Joseph
 Hilton) 2 chiefly dial : FOX
2pock \ 'vt -ED/-ING/-S : to mark with or as if with pocks
 : PIT (the rains of twenty centuries had ~ed that pure and
 haughty face — Compton Mackenzie) (the hull was ~ed with
 dents — Frank Schreider)
3pock \ ' chiefly dial var of **1POKE** 1a(1)
pock-arred \ ' , 'ard, -ad \ adj [E dial. *pock-arr* pockmark (fr.
 'pock + arr) + -ed] dial Brit : POCKMARKED
1pock-et \ 'pækət, usu -əd + V \ n -s [ME *poket*, fr. ONF
pokete, dim. of *poke*, *poque* bag, of Gmc origin; akin to MD
poke bag — more at POKE] 1 : a coarse bag or sack; esp : one
 used in packing produce for market (the packing of green
 beans and peas in orange ~s — W.J.C. van Rensburg) (rice
 ~s) 2 a : a small bag carried by a person : PURSE (Lucy
 Locket lost her ~) b : a small cloth bag sewed or inserted
 into a garment and left open at the top or side (pants ~)
 (coat ~) (change ~) 3 : any of various units of weight;
 esp : an English unit for hops equal to 168 pounds 4 : supply
 of money : MEANS (ample choice of accommodations to fit all
 ~s — *Christian Science Monitor*) (the real gems I have seen
 were beyond my ~ — H.J.Laski) 5 : something that serves
 as a receptacle or container : as a : any of the bags at the
 corners or sides of a billiard table b : a superficial pouch in
 some animals (as the cheek pouch of the pocket gopher)
 c (1) : a receptacle usu. of strong paper and open at one end
 attached to the inside cover of a book (2) : ENVELOPE
 d (1) : the trap of a weir or pound net (2) : the cod of a seine
 e : a box (as in a sorting case) or space (as on a checker-
 board) for holding classified or alphabetized items or counters
 6 : a small isolated area or group distinguished (as in sub-
 stance, form, contents, or condition) from a larger area or
 group surrounding it (~s of unemployment, scattered across
 the country — U.S. News & World Report) (~s here and there
 where the population has remained unchanged since remotest
 centuries — G.O.Williams) : as a (1) : a cavity found on or
 beneath the surface of the ground and containing a deposit
 (as of gold, oil, gas, or water) (china clay and china stone
 found in great ~s on the surface of the granite masses — L.D.
 Stamp) (an oil ~ underlying the city — *Amer. Guide Series* :
Mich.) (2) : a small body of ore (are not uniformly ore bear-
 ing, but rather punctuated with ~s and sheets of iron ore
 — *Amer. Guide Series* : *Minn.*) b : a small abnormal enclosed
 formation in the body (a ~ is formed with a center of degener-
 ated and infected material — Morris Fishbein) c : a battle
 area or a body of soldiers surrounded or nearly surrounded
 by enemy forces (the woods might have been planned by a
 master strategist to hold ~s of resistance — *Infantry Jour.*)
 d : AIR HOLE 7 : a hollow place or cavity : as a : a mountain
 glen or hollow (small villages resting solidly in the ~s of
 northern mountains — *Amer. Guide Series* : *N.J.*) b : a
 socket into which something (as a post, stake, or bar) fits (the
 bars slide into ~s in the interior of the reactor — Leon Svirsky)
 c : a cavity in a casting or a high point in a pipeline where
 foreign substance (as dirt or air) can collect and possibly
 become detrimental to intended functioning d : a hole or
 recess in a building member (as a window frame or flue) (a
 venetian blind ~) (a soot ~) e : an interspace made by
 sewing a strip of canvas on a sail in which a batten or a light
 spar can be placed f : a space between two bowling pins
 g : a cavity made in a piece of meat by a deep cut or removal
 of a bone to permit the insertion of stuffing (a ~ in a shoulder
 of veal) (a ~ roast) 8 : an enclosed place or area : as a : a
 bight on a lee shore (a little ~ with a stone beach at the head
 of it — G.W.Brace) b : BLIND ALLEY (no ~s or dead ends in
 which pupils might be trapped — *Nat'l Fire Codes*) c : the
 position of a contestant in a race hemmed in by others 9 a : a
 temporary extension to a foundry flask b : a large core of a
 foundry mold enclosed on three sides by metal and well
 pierced — in one's pocket 1 : very close to one 2 : in one's
 control or possession (sure that local law enforcement was in his

— Randall Jarrell)
 notes in his ~ —
 folding container
 (2) : PURSE c : H
 ~s was black, the
 Brand) 3 a :
 house or cottage
 workers — *Harper*
 of voting against
 forebears — Elmo
 book clam \ ' =
 cosus) of the up
 mother-of-pearl ar
 pocket boom n : a
 pocket borough n
 stituency controlle
 CLOSE BOROUGH
 trolled by a single
 pocket chronomet
 escapement or wit
 pocket conveyor
 endless moving cl
 pocket dry rot n :
 pocketed bat n :
 Jemorosacca) of
 pocket edition n
 something (this
 perfect pocket edit
 pock-et-ful \ 'pæk
 fulz, -ts, fül \ : as
 (a ~ of money) (a
 pocket gopher n :
 sciurormorph rode
 fur-lined cheek po
 pocket-handkerch
 the pocket 2 :
 pocket-handkerchie
 pocket-hole \ ' =
 gives access to a
 pock-et-ing \ 'pæk
 of various strong
 suits and coats
 pocket judgment
 : STATUTE MERCHA
 pocketknife \ ' =
 folding into the ha
 pock-et-less \ 'pæk
 pocket money n :
 (provided with w
 financial dignity
 spending money
 pocket mouse n, p
 burrowing rodents
 nathus and relate
 found in arid par
 hind legs and tail
 pocket piece n 1
 charm or good-luc
 — Boy Scout Hana
 frame pulley stile t
 sash cord
 pocket pistol n 1 :
 pocket plum n : p
 pocket print n : a
 a pattern is lifted
 pocket rat n : any
 a : POCKET GOPHER
 pocket rot n : a ro
 pockets often fille
 substances, but ev
 pockets pl of POK
 pocket sheriff n :
 sole authority of t
 pocket-size \ ' =
 convenient for the
 scale : DIMINUTIVE
 pocket veto n : an
 ecutive (as by the
 retention of the bi
 legislature
 pock-ety \ 'pækəd-ē
 uneven distributio
 ing, resembling, or
 pocking pres part c
 'pockmark \ ' =
 scar caused by sma
 2pockmark \ ' vt
 : PIT, SCAR (the mi
 — Oscar Handlin)
 D.Edmonds)
 pockmarked \ ' =
 pock neuk or pock
 : the bottom of a
 : MEANS
 pock pudding n [3p

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